

§ 162.572

section, it must require the parties to submit to us:

(1) A copy of the executed amendment or other documentation of any Indian landowners' actual consent;

(2) Proof of mailing of the amendment to any Indian landowners who are deemed to have consented; and

(3) Any other pertinent information for review.

(d) Unless specifically authorized in the lease, a written power of attorney, or a court document, Indian landowners may not be deemed to have consented to, and an Indian landowner's designated representative may not negotiate or consent to, an amendment that would:

(1) Reduce the payment obligations to the Indian landowners;

(2) Increase or decrease the lease area;

(3) Terminate or change the term of the lease; or

(4) Modify dispute resolution procedures.

§ 162.572 What is the approval process for an amendment to a WSR lease?

(a) When we receive an amendment that meets the requirements of this subpart, we will notify the parties of the date we receive it. We have 30 days from receipt of the executed amendment, proof of required consents, and required documentation to approve or disapprove the amendment or inform the parties in writing that we need additional review time. Our determination whether to approve the amendment will be in writing and will state the basis for our approval or disapproval.

(b) Our letter informing the parties that we need additional review time must identify our initial concerns and invite the parties to respond within 15 days of the date of the letter. We have 30 days from sending the letter informing the parties that we need additional time to approve or disapprove the amendment.

(c) If we do not meet the deadline in paragraph (a) of this section, or paragraph (b) of this section if applicable, the amendment is deemed approved to the extent consistent with Federal law. Unless the lease provides otherwise, provisions of the amendment that are

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inconsistent with Federal law will be severed and unenforceable; all other provisions of the amendment will remain in force.

§ 162.573 How will BIA decide whether to approve an amendment to a WSR lease?

(a) We may disapprove a WSR lease amendment only if at least one of the following is true:

(1) The Indian landowners have not consented and their consent is required;

(2) The lessee's mortgagees or sureties have not consented;

(3) The lessee is in violation of the lease;

(4) The requirements of this subpart have not been met; or

(5) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) We will defer, to the maximum extent possible, to the Indian landowners' determination that the amendment is in their best interest.

(c) We may not unreasonably withhold approval of an amendment.

WSR LEASE ASSIGNMENTS

§ 162.574 May a lessee assign a WSR lease?

(a) A lessee may assign a WSR lease by meeting the consent requirements in § 162.575 and obtaining our approval of the assignment under §§ 162.576 and 162.577 or by meeting the conditions in paragraphs (b) or (c) of this section.

(b) Where provided in the lease, the lessee may assign the lease to the following without meeting consent requirements or obtaining BIA approval of the assignment, as long as the lessee notifies BIA of the assignment within 30 days after it is executed:

(1) Not more than three distinct legal entities specified in the lease; or

(2) The lessee's wholly owned subsidiaries.

(c) The lessee may assign the lease without our approval or meeting consent requirements if:

(1) The assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance;

(2) The assignee agrees in writing to assume all of the obligations and conditions of the lease; and

(3) The assignee agrees in writing that any transfer of the lease will be in accordance with applicable law under § 162.014.

§ 162.575 What are the consent requirements for an assignment of a WSR lease?

(a) Unless the lease provides otherwise, the lessee must notify all Indian landowners of the proposed assignment.

(b) The Indian landowners, or their representatives under § 162.013, must consent to an assignment in the same percentages and manner as a new WSR lease under § 162.012, unless the lease:

(1) Provides that individual Indian landowners are deemed to have consented where they do not object in writing to the assignment within a specified period of time following the landowners' receipt of the assignment and the lease meets the requirements of paragraph (c) of this section;

(2) Authorizes one or more representatives to consent to an assignment on behalf of all Indian landowners; or

(3) Designates us as the Indian landowners' representative for the purposes of consenting to an assignment.

(c) If the lease provides for deemed consent under paragraph (b)(1) of this section, it must require the parties to submit to us:

(1) A copy of the executed assignment or other documentation of any Indian landowners' actual consent;

(2) Proof of mailing of the assignment to any Indian landowners who are deemed to have consented; and

(3) Any other pertinent information for us to review.

(d) The lessee must obtain the consent of the holders of any bonds or mortgages.

§ 162.576 What is the approval process for an assignment of a WSR lease?

(a) When we receive an assignment that meets the requirements of this subpart, we will notify the parties of the date we receive it. If our approval is required, we have 30 days from receipt of the executed assignment, proof of required consents, and required doc-

umentation to approve or disapprove the assignment. Our determination whether to approve the assignment will be in writing and will state the basis for our approval or disapproval.

(b) If we do not meet any of the deadlines in this section, the lessee or Indian landowners may take appropriate action under § 162.588.

§ 162.577 How will BIA decide whether to approve an assignment of a WSR lease?

(a) We may disapprove an assignment of a WSR lease only if at least one of the following is true:

(1) The Indian landowners have not consented and their consent is required;

(2) The lessee's mortgagees or sureties have not consented;

(3) The lessee is in violation of the lease;

(4) The assignee does not agree to be bound by the terms of the lease;

(5) The requirements of this subpart have not been met; or

(6) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) In making the finding required by paragraph (a)(6) of this section, we may consider whether:

(1) The value of any part of the leased premises not covered by the assignment would be adversely affected; and

(2) If a performance bond is required, the assignee has posted the bond or security and provided supporting documents that demonstrate that:

(i) The lease will be enforceable against the assignee; and

(ii) The assignee will be able to perform its obligations under the lease or assignment.

(c) We will defer, to the maximum extent possible, to the Indian landowners' determination that the assignment is in their best interest.

(d) We may not unreasonably withhold approval of an assignment.